



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0048]

RIN 1625-AA11

Regulated Navigation Area; MBTA Saugus River Railroad

Drawbridge Rehabilitation Project, Saugus River, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Saugus River under and surrounding the Massachusetts Bay Transportation Authority (MBTA) Saugus River Railroad Drawbridge which crosses the Saugus River between Saugus and Lynn, Massachusetts. This temporary interim rule is intended to protect both vessels and construction workers by restricting vessel traffic during periods when the bridge is being repaired.

DATES: This rule is effective in the CFR from [INSERT DATE OF PUBLICATION], until 11:59 p.m. on November 30, 2012, and is effective with actual notice for purposes of enforcement February 17, 2012. Public comments will be accepted and

reviewed by the Coast Guard through November 30, 2012.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0048 using any one of the following methods:

(1) Federal e-Rulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor,
Room W12-140, 1200 New Jersey Avenue SE, Washington, DC
20590-0001.

(4) Hand delivery: Same as mail address above,
between 9 a.m. and 5 p.m., Monday through Friday, except
Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these
four methods. See the "Public Participation and Request
for Comments" portion of the SUPPLEMENTARY INFORMATION
section below for instructions on submitting comments.

Documents indicated in this preamble as being
available in the docket are part of docket USCG-2012-0048
and are available online by going to
<http://www.regulations.gov>, inserting USCG-2012-0048 in the
"Keyword" box, and then clicking "Search." They are also
available for inspection or copying at the Docket

Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617-223-4000, e-mail Mark.E.Cutter@uscg.mil or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone 617-223-8385, e-mail Isaac.M.Slavitt@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

As this temporary interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address

significant public comments.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0048), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2012-0048" in the "Keyword" box. Click

"Search" then click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0048" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. 553. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe such a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Regulatory Information

The Coast Guard is issuing this interim rule without prior Federal Register notice pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are "impracticable,

unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

During an in-depth inspection of the railroad bridge structure, significant deterioration of the granite pier that supports the bascule bridge was observed. Out of safety concerns, the MBTA has instituted single track operation, a reduction of speed, and prohibited braking on the bridge until they can stabilize the pier. The long term goal is to replace the granite pier, but in the short term they have to add additional support to the bridge; this is being done by adding a new temporary support pier.

The MBTA notified the Coast Guard on January 10, 2012 that it intended to close the bridge for multiple weekends beginning in late February, 2012. It would be impracticable to issue an NPRM and take public comments within that timeframe, and it would be contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of waterway users operating in the vicinity of the bridge. The delay of necessary repair operations would result in increased costs, delay the date when the bridge is expected to reopen for normal operations, and have a larger impact on the boating public

during the peak of the recreational boating season. Additionally, the potential dangers posed by the bridge in its current state demand immediate action. It is impracticable and contrary to the public interest to delay this regulation, especially in light of the fact that the Coast Guard may publish an amended rule at any time if necessary to address public concerns.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this interim rule is to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment during the rehabilitation project of the MBTA Saugus River Railroad Drawbridge.

Discussion of Rule

This action is intended to control vessel traffic for the duration of the MBTA Saugus River Railroad Drawbridge rehabilitation over the main channel of the Saugus River. The construction work involves large machinery and construction vessel operations in the navigable waters of the Saugus River immediately surrounding the MBTA Saugus River Railroad Drawbridge. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as the construction crew. The Coast Guard may close the regulated area described in this rule to all vessel traffic during any circumstance that poses an imminent threat to waterway users operating in the area. The weekend waterway closures will be made with as much advance notice as possible.

The Captain of the Port (COTP) Sector Boston will cause notice of enforcement, suspension of enforcement, or closure of the waterway to be made by appropriate means to ensure the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, and Marine Safety Information Bulletins.

Entry into this RNA is prohibited unless authorized by the COTP Sector Boston. Any violation of this RNA is

punishable by civil and criminal penalties, in rem liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant mariner credentials.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal because the amount of traffic in this waterway is extremely limited. Furthermore, the Captain of the Port has the ability to suspend the provisions of this regulation when necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" means small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: local fishermen, the owners or operators of marinas, businesses (such as waterside restaurants), and vessels who intend to transit in the Saugus River beneath the MBTA Saugus River Railroad Drawbridge during the effective period.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: the primary waterway users, of which there are approximately six during this time of the year, are lobster fishermen. The parties that have the potential to be affected have been contacted through the Saugus

Harbormaster and have made plans to work around the closure times. Additionally, we will use appropriate means to inform the public before, during, and at the conclusion of any RNA enforcement period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of

materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of an RNA. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. Any comments received concerning environmental impacts will be considered and changes made to the environmental analysis checklist and categorical exclusion determination

as appropriate.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0048 to read as follows:

§165.T01-0048 Regulated Navigation Area; MBTA Saugus River Railroad Drawbridge rehabilitation project, Saugus River, MA

(a) Location. The following area is a Regulated Navigation Area (RNA): All navigable waters, surface to bottom, on the Saugus River, within a 300 yard radius of position 42°26'50"N, 70°58'19"W in the vicinity of the MBTA Saugus River Railroad Drawbridge between Saugus and

Lynn, MA.

(b) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply in addition to those provisions outlined below.

(2) In accordance with the general regulations, entry into or movement within this zone during periods of enforcement is prohibited unless authorized by Captain of the Port Sector Boston (COTP).

(3) All persons and vessels must comply with all directions given to them by the COTP or the on-scene representative. The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel or other designated craft, or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Notwithstanding any other provisions in this regulation, the movement of official, emergency vessels within the regulated area will be permitted provided that

the contractor is notified in order to remove potential hazards or obstructions.

(6) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR Subchapter E, Inland Navigational Rules), remain in effect within the regulated area and must be strictly followed at all times.

(c) Enforcement period. (1) This regulation is enforceable each week from Friday at 11 p.m. until Monday at 4 a.m., from February 24, 2012, through November 30, 2012.

(2) The COTP Sector Boston will cause notice of enforcement to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification may include but are not limited to Broadcast Notice to Mariners, Local Notice to Mariners, and Marine Safety Information Bulletins. Such notification will include the dates and times that enforcement will begin and end.

(d) Penalties. Failure to comply with this section may result in civil or criminal penalties pursuant to the Ports and Waterways Safety Act, 33 U.S.C. 1221 et seq. Report violations of this regulated navigation area to the COTP Sector Boston, at 617-223-5757 or on VHF-Channel 16.

Dated: February 17, 2012

D. A. Neptun
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

[FR Doc. 2012-5329 Filed 03/07/2012 at 8:45 am;
Publication Date: 03/08/2012]